



KENTUCKY BOARD OF PHYSICAL THERAPY

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Matthew G. Bevin
Governor

Scott D. Majors, Esq.
Executive Director

MINUTES OF MEETING

March 17, 2016

Board Members: Tina Volz, PT, Chair
Ron Barbato, PT, Chair-Elect
Troy Grubb, PT
Karen Craig Ogle, PT
Linda Pillow, PT
Virginia Johnson, Public Member

Board Staff: Scott D. Majors, Executive Director
Krista Barton, Executive Secretary
Stephen Curley, Investigator
Louis D. Kelly, Esq., Board Counsel

Board Agents: Brian Fingerson, RPh, IPTPC Director

KPTA Liaison: Janice Kuperstein, PT, PhD, MSED

Absent: Talia Weinberg, PT

A meeting of the Kentucky Board of Physical Therapy was called to order by the Board's Chair, Tina Volz, at 9:01 a.m. on Thursday, 03/17/16, at the Board office. A quorum was present.

Minutes for Previous Regular Meeting

The Board reviewed and discussed an amendment to the minutes of the 01/14/16 Board meeting.

Action taken: Ms. Ogle made a motion to approve the minutes of the Board meeting of 01/14/16, as amended. This motion was seconded by Mr. Grubb, which carried.

Board Discussions, Committees and Opinion Requests

BoardEffect

Mr. Curley gave a presentation on the navigation of BoardEffect regarding login procedures, password changes, and annotations. Ms. Pam Nason from BoardEffect gave a lengthy presentation on the many features available on the site.

Action taken: No action taken.

2016 Board Meeting Schedule

The Board briefly discussed the schedule for the September 2016 Board meeting, which is currently scheduled for 09/15/16. Mr. Barbato and Ms. Ogle reported they will both be absent from the September meeting. The Board decided to revisit this topic at the May meeting.

Action taken: No action taken.

Proposed Physical Therapy Licensure Compact

The Board reviewed information regarding the progress of HB 163, the Enhanced Nurse Licensure Compact, as well as the status of legislative efforts to adopt the Physical Therapy Licensure Compact initiated by several other states. Following lengthy discussion, the Board decided to schedule a meeting with leadership of both KBPT and KPTA to discuss the Compact, address KPTA's questions and concerns, and gauge KPTA's interest in supporting proposed legislation in Kentucky to enact the Compact. The meeting is to include Ms. Volz, Ms. Ogle, Mr. Barbato and Mr. Majors representing the KBPT. Ms. Pillow will serve as an alternate.

Action taken: Ms. Volz will contact Mr. Patrick Myers, the President of KPTA, to suggest a list of attendees, a meeting date and time. Mr. Majors is to create an outline presentation for this meeting.

Online Verification System & Payment Portal

Mr. Majors reported that he, Mr. Curley, and Mr. Bob Evancho met on 02/24/16 to discuss the functionality of KBPT's Access database, as well as the feasibility and costs associated with the design and development of a newer database with increased functionality. Mr. Majors offered to update the Board at its next meeting with additional information.

2017-2019 Jurisprudence Exam

Mr. Majors reported that in order to have the Jurisprudence Exam (JE) posted by 04/01/2017, Kentucky Interactive will need to have the JE questions submitted in early January of 2017. The Board discussed the manner by which the next JE may be fully implemented by this deadline.

Action taken: Ms. Pillow moved to reappoint Peggy Block, Debra Turner and Tom Pennington as item writers for the 2017-2019 Jurisprudence Exam. The motion was seconded by Ms. Ogle, which carried.

Scope of Practice Workgroup

The Board had a lengthy discussion regarding the suggested changes proposed by the Scope of Practice Workgroup.

Action taken: The Board requested that Mr. Kelly review other states' Practice Acts to collect information regarding PTA supervision and to distribute this information to the members of the workgroup by 04/15/16.

Monitoring Procedures and Requirements

Mr. Curley reported that the Monitoring Procedure application has been completed, and the next step is to create a training program for new and existing monitors. The Board considered who would be responsible for creating the training process.

Action taken: Following discussion the Board decided that there will be a portal section of the training that Mr. Curley will be responsible for creating. Additionally, there will be a general orientation section. The Board would like to acquire information from outside sources regarding basic structures, course outlines and educational materials. The Board asked Mr. Majors to solicit this information from such entities as Affiliated Monitors and CLEAR.

KBPT Declaratory Opinions Workgroup

The Declaratory Opinion workgroup met on 03/09/2016. The Board discussed in length the topic of Declaratory Opinions and the prospect of creating a Frequently Asked Question (FAQ) page. The workgroup recommended that: (1) any relevant Declaratory Opinions be archived; (2) Opinions which are no longer current with the Practice Act be rescinded; and (3) the most relevant Declaratory Opinions be included in a FAQ.

Action taken: Mr. Grubb requested that everyone review the information provided and email him within the next couple of weeks with any ideas on additions to the FAQ page or concerns. There will be another workgroup meeting scheduled and a definitive plan will be presented at the May Board meeting.

2016 FARB Forum

Mr. Barbato gave a report to the Board concerning his attendance at the 2016 FARB conference in January. He discussed presentations relative to public perception of regulations, mobility and portability, online applications for licensure and renewal, use of technology in Board meetings, documentation, criminal prosecutions, and advisory opinions.

Action taken: No action taken.

2017 CE Audit Discussion

Mr. Majors again reviewed with the Board the current CE Audit process as well as several options that may help streamline this process. Moreover, Mr. Majors provided an updated “model” option that incorporated the Board’s comments expressed at its last meeting.

Action taken: Following discussion, the Board instructed Mr. Majors to draft changes to the Board’s Policy and Procedure Manual relating to the CE Audit process that are consistent with the “model” option so the Board may consider this language at its next meeting.

Civil Matters and Investigations

2015 Complaint Committee

C2015-11: The Complaint Committee reported that Counsel was unable to contact the credential holder. There will be a status update provided at the May Board meeting.

Action taken: No action taken.

BIC2015-12: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2015-24: The Complaint Committee reported that this case involves allegations of fraud and material deception.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Ogle, which carried.

BIC2015-25: The Complaint Committee reported that this case concerns a credential holder involved in a pending civil lawsuit.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Pillow, which carried.

C2015-29: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment, completed the required CE course, and paid his/her respective fine.

Action taken: The Complaint Committee recommended and moved to close this case. The motion was seconded by Mr. Barbato, which carried.

BIC2015-31: The Complaint Committee reported that the credential holder has accepted the proposed Private Admonishment, completed the required CE course, and paid his/her respective fine.

Action taken: The Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Pillow, which carried.

C2015-35: The Complaint Committee reported that a telephonic prehearing conference has been set for 03/21/16 and this case is ongoing.

Action taken: No action taken.

C2015-103: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

C2015-104: The Complaint Committee reported that this case was closed at the January Board meeting. However, Board staff received an anonymous news article with possible further term protection violations.

Action taken: The Complaint Committee recommended and moved to reopen the case due to a failure to comply with the terms and to file for injunctive relief. The motion was seconded by Ms. Ogle, which carried.

C2015-108: The Complaint Committee reported that this case is ongoing. .

Action taken: No action taken.

C2015-109: The Complaint Committee reported that this case involves allegations of a credential holder failing to respect the rights and dignity of a patient.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to dismiss this case due to insufficient evidence. The motion was seconded by Ms. Ogle, which carried.

CE2015-39:

CE2015-40:

CE2015-41:

CE2015-47:

CE2015-48:

CE2015-50:

CE2015-63:

CE2015-64:

CE2015-65:

CE2015-78:

CE2015-105:

BIC2014-19:

BIC2015-13:

The Complaint Committee reported that these cases are considered settled; however, there were Notices of Hearing and formal charges filed.

Action taken: The Complaint Committee recommended and moved to accept the Recommended Orders of Dismissals and enter Final Orders of dismissal. The motion was seconded by Ms. Pillow, which carried.

CE2015-37: The Complaint Committee reported that there is a prehearing conference scheduled with the credential holder and hearing officer and the matter is ongoing.

Action taken: No action taken.

CE2015-86: The Complaint Committee reported that an administrative hearing is scheduled for 05/18/16 at 3:00 p.m. at the Board Office.

Action taken: No action taken.

2016 Complaint Committee

C2016-01: The Complaint Committee reported that this case involved malpractice settlement against this credential holder.

Action taken: After reviewing the facts and circumstances of this case, the Complaint Committee recommended and moved to close this case. The motion was seconded by Ms. Pillow, which carried.

C2016-02: The Complaint Committee reported that this case is ongoing.

Action taken: No action taken.

BIC2016-03: The Complaint Committee reported that this case involves a credential holder who failed to comply with terms of his/her Private Admonishment.

Action taken: The Complaint Committee recommended and moved to authorize Board Counsel to file a Notice of Hearing and formal charges. The motion was seconded by Ms. Pillow, which carried.

BIC2016-04: The Complaint Committee reported that this case involves allegations of possible fraud and material deception.

Action taken: The Complaint Committee recommended and moved to file a Board Initiated Complaint (BIC). The motion was seconded by Mr. Grubb, which carried.

BIC2016-06: The Complaint Committee reported that this case involves alleged criminal misconduct of a credential holder.

Action taken: The Complaint Committee recommended and moved to file a Board Initiated Complaint (BIC). The motion was seconded by Ms. Johnson, which carried. Additionally, the Complaint Committee recommended and moved to issue an Order that the credential holder must obtain a fitness to practice evaluation by a licensed professional approved by the Board's Impaired Physical Therapist Practitioners Committee (IPTPC) at his/her own expense within thirty (30) days, or in lieu of obtaining the evaluation the credential holder may enter into a voluntary agreement with the Board's IPTPC for two years with leave to petition for early release. Further, if the credential holder fails to abide by the terms of the Order, the Board shall delegate to staff the authority to issue an Immediate Temporary Suspension (ITS). The motion was seconded by Mr. Grubb, which carried.

IPTPC Report

Mr. Fingerson presented the IPTPC report dated 03/09/16. IPTPC cases which previously have come to the attention of the Board, or were discussed at length during the Complaint Committees' reports, were reviewed.

Additionally, Mr. Fingerson reported to the Board that the credential holder in BIC2015-13 has missed all of his/her deadlines agreed upon with enrollment with IPTPC.

Action taken: Mr. Majors will review the terms of the credential holder's settlement agreement and report to the Board at the May meeting whether the filing of a Notice of Hearing and Charges is warranted.

Opinion Requests

The Board reviewed the following opinion requests from:

(1) Sonya Gabbert, PT, who sought clarification concerning PTAs working with Medicare patients in an EMR in a home health setting and as to signature/co-signature requirements.

Action taken: Following discussion, the Board instructed staff to respond by advising that, in the scenario presented, the PTA would be permitted to gather objective data and information, but would not be permitted to engage in conduct that would be considered the performance of an assessment or the interpretation of this data. The Board encouraged Ms. Gabbert to review the Standards of Practice for the Physical Therapist Assistant as referenced in 201 KAR 22:053 Section 3, as well as the Standards for Documentation that address requirements for signatures/co-signatures as referenced in 201 KAR 22:053 Section 5.

(2) KBPT staff brought a PTA endorsement application before the Board for review. The endorsement applicant answered "yes" on question 8 on his/her application concerning being convicted of or having any pending charges for any felony, misdemeanor, or any crime in the courts of this state or any other state, territory or county. The applicant is currently licensed in the state of Ohio. Mr. Fingerson, IPTPC Chair, reported that he has reviewed the application and does not deem participation in IPTPC to be necessary at that time.

Action taken: Ms. Pillow made the motion to approve the application with no restrictions upon completion. The motion was seconded by Ms. Johnson, which carried.

(3) Ryan Sweeney, PTA, who advised that he is also a certified person trainer and – in his role as such -- has been asked to serve as the Outpatient Orthopedic Coordinator to assist an orthopedic physician with education and home health exercises in the hospital's orthopedic office.

Action taken: Following discussion, the Board instructed staff to respond by:

(1) providing Mr. Sweeney a copy of the statutory definition of Physical Therapy, as found at KRS 327.010(1), for his immediate review;

(2) advising Mr. Sweeney that he must ensure that all activity he proposes to offer as a certified personal trainer in a supportive Outpatient Orthopedic Coordinator role to the orthopedic physician must be outside the Board's jurisdiction and control by specifically ensuring that:

(a) his proposed services do not fall within the statutory definition of physical therapy, as listed above;

(b) his task of "patient navigation" is one in which the clients for whom he proposes to provide service are not also physical therapy patients with a physical therapy diagnosis, a disease specific process that requires a disease specific physical therapy plan of care; and

(c) he does not in any manner represent/market/identify himself to be a physical therapist assistant or to be performing physical therapy during the course of offering these supportive services to the clients or to the orthopedic physician.

(4) KBPT staff brought a PTA examination application before the Board for review. The examination applicant answered “yes” on two questions on his/her application, including question 8 concerning being convicted of or having any pending charges for any felony, misdemeanor, or any crime in the courts of this state or any other state, territory or county. The applicant provided the Board with incomplete information regarding the applicant’s criminal history and also failed to provide supplemental information to address this omission when requested to do so.

Action taken: Ms. Johnson made the motion for the Board to open an investigation and file a Board Initiated Complaint, BIC2016-05. The motion was seconded by Ms. Ogle, which carried.

Update on Monitoring Probations

The Board noted the following credential holders who are presently being monitored: Tiffiney S. Bentley, PT and Donald Bruce Taylor, PT. A monitor report was submitted for Ms. Bentley by the Board-appointed monitor and considered by the Board.

Additionally, Mr. Majors reported that Dr. Arthur Nitz is scheduled to complete his probation on 03/21/16.

Ms. Ogle left the Board meeting at 2:01 p.m.

(2015 Complaint Committee Continued)

CE2015-43: The Board’s General Counsel reported that the Board received a Hearing Officer’s Recommended Order of Default Judgment in this case, dated 02/04/16, and the Board was thus required to consider the entire hearing record and to deliberate whether to accept this Recommended Order prior to issuing the Board’s Final Order, pursuant to KRS 13B.120

Action taken: As Ms. Volz served on the Complaint Committee which considered this case, she recused herself from the Board’s deliberations in issuing the Final Order. Ms. Volz made a motion for Ms. Pillow to assume the role of Acting Chair in place of Ms. Volz for the duration of the Board’s consideration of this case. The motion was seconded by Ms. Johnson, which carried.

Ms. Pillow made a motion to go into Executive Session pursuant to KRS 61.810(1)(c) for the purpose of discussing proposed or pending litigation on behalf of the Board. The motion was seconded by Ms. Johnson, which carried, and the Board retired into closed Executive Session.

Ms. Pillow made a motion for the Board to come out of Executive Session. The motion was seconded by Ms. Johnson, which carried.

Mr. Barbato made a motion for the Board to accept the Recommended Order of Default Judgment of the Hearing Officer and adopt it as the Board’s Final Order, to revoke Rita Neely’s physical therapy license, number 001166. The motion was seconded by Mr. Grubb, which carried.

REPORTS AND OTHER BUSINESS

Legal Report

HB95 & SB202

Mr. Kelly reported on the status of House Bill 95 and Senate Bill 202 for the 2016 Legislative Session of the General Assembly. Mr. Kelly will continue to monitor the progress of both bills.

9 KAR 1:025 Executive Branch Ethics Commission

Mr. Kelly reported on a new administrative regulation promulgated by the Executive Branch Ethics Commission relating to conflicts of interests that apply to all public servants.

KSAA

Mr. Kelly reported to the Board regarding a letter the Board received from the Kentucky State Acupuncture Association regarding dry needling. The Board took the letter under advisement and took no further action.

Action taken: The Board took the letter under advisement and took no further action.

KBPT Liaison to KPTA Report

KPTA Board Retreat

Ms. Ogle reported to the Board that she attended KPTA's Strategic Planning session on 03/11/16. She explained that KPTA is currently trying to increase membership. KPTA inquires if the Board would be willing to send out a blast email to licensees and credential holders that would provide them free access to KPTA's website.

Action taken: The Board asked Ms. Ogle to inform KPTA that KBPT is willing to provide a licensure and credential list which would enable KPTA to send out information regarding membership. However, this list will not include emails due to its credential holders' reasonable expectation of privacy, and the Executive Branch Ethics Code prohibits KBPT staff from sending out an email blast to promote KPTA.

KPTA Liaison to KBPT Report

Therapy Tri-Alliance

Dr. Kuperstein reported that, subsequent to the January Board meeting when the Board decided that it would not participate in an open forum at the Tri-Alliance Legislative Day in Frankfort, a new proposal was brought from KPTA. The request was for the Executive Directors of KBPT and KPTA to present together about the differences between the organizations. Mr. Majors agreed to this after receiving approval from the Board Chair. This presentation was extremely well-received by the students and a suggestion was made to consider repeating this periodically.

Director's Report

Financial Report

The Board reviewed monthly, quarterly and 2016 annual FAS3 financial reports addressing the Board's revenues and expenditures. Mr. Majors also updated the Board on the increased employer contribution rates for retirement and health insurance from 2006 through to the present. Mr. Majors also reported that the Board's Finance workgroup held its first meeting of 2016 on 03/16/16.

Action taken: No action taken.

Articles of Interest

Mr. Majors circulated copies of topical articles of interest which addressed issues on safety classes for employers and the status of Kentucky's general budget.

Action taken: No action taken.

Office Security

Mr. Majors reported that the Commonwealth's Office of Homeland Security is in the process of making safety classes available for staff and members of state boards, agencies and commissions to attend.

Action taken: The Board elected to pass until its next meeting any consideration of scheduling this safety training for its members; however, the Board also authorized staff to explore the feasibility of scheduling such training in the near term for its staff, if deemed to be appropriate.

Staff Developments

(1) Mr. Majors circulated a copy of a Letter of Commendation of Mr. Curley, as submitted by David Beyer, Esq., Executive Director for the Kentucky Board of Dentistry ("KBD"), in appreciation for the assistance Mr. Curley provided to KBD staff to help protect office furniture and fixtures during a recent break in a building water line.

Action taken: No action taken.

(2) Mr. Majors reported that Ms. Donna Sims, KBPT's Licensure Coordinator, has announced her retirement from state government employment, effective 08/01/16. Mr. Majors discussed this development in detail on 03/16/16 with the members of the Finance Workgroup.

Action taken: Following discussion, Ms. Volz made the motion for the Board to authorize Mr. Majors to take whatever action he deemed appropriate concerning the process of hiring Ms. Sims' replacement, including the authorization to pursue the reclassification of Ms. Sims' position description if deemed to be consistent with the office's current job tasks, as long as KBPT's budget relating to personnel costs for its support staff is not increased from its present level. Mr. Grubb seconded this motion, which carried.

KBPT Offices & Commonwealth Office of Technology (COT)

Mr. Majors provided a report of staff's efforts to work with COT representatives in an effort to improve efficiency of its data and internet services while also reducing operating costs.

Ms. Pillow left the Board meeting at 4:19 p.m.

Conferences Relating to Physical Therapy

The Board reviewed the following schedule of upcoming conferences

- a. CLEAR – 2016 Annual Educational Conference
(09/15-17/16 – Portland, OR)
- b. CLEAR Webinar -- Investigation of Online Classifieds, e-commerce and Social Media
(03/23/16)
(Ms. Johnson made the motion for the Board to authorize staff to register for this webinar, at a total cost of \$60.00, and for Mr. Curley and Mr. Majors to attend for career development. This motion was seconded by Mr. Barbato, which carried.)
- b. FARB – 2016 Regulatory Law Seminar
(09/29-10/2/16 – Chicago, IL)
- c. FSBPT – 2016 Annual Meeting, Conference and Delegate Assembly
(11/04-06/16 – Columbus, OH)

New licensees/reinstatements/renewal applications

Action taken: Ms. Volz made the motion to review, approve and ratify the lists of persons issued licenses and certificates since the last meeting, as well as a list of examinees and reinstatements. This motion was seconded by Mr. Barbato, which carried. The lists are attached to these minutes.

A motion was made by Mr. Grubb to adjourn the meeting at 4:24 p.m. The motion was seconded by Ms. Johnson, which carried.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott D. Majors", with a stylized flourish at the end.

Scott D. Majors
Executive Director